

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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CITIZENS FOR RESPONSIBILITY AND	:	
ETHICS IN WASHINGTON	:	
and MELANIE SLOAN	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 1:10-cv-01350 (RMC)
	:	
FEDERAL ELECTION COMMISSION,	:	
Defendant.	:	

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**PLAINTIFFS’ OPPOSITION TO DEFENDANT’S MOTION TO DISMISS**

Pending before the Court is the motion of defendant Federal Election Commission (“FEC”), made pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6), to dismiss plaintiffs’<sup>1</sup> complaint of August 11, 2010. Since the filing of defendant’s motion, plaintiffs have filed an amended complaint as of right pursuant to Fed. R. Civ. P. 15(a)(1)(B).<sup>2</sup> The filing of the amended complaint supercedes the original and renders it a nullity. *See, e.g., Purkey v. Marberry*, 2010 U.S. App. LEXIS 14362 (7<sup>th</sup> Cir. 2010); *Klyce v. Ramirez*, 852 F.2d 568 (6<sup>th</sup> Cir. 1988); *Barnes v. Birds Eye Foods LLC*, 2010 U.S. Dist. LEXIS 69579, \*2-3 (W.D. MI. 2010) (amended complaint, filed of right within 21 days of service of motion under 12(b), “supercedes the original complaint, which becomes a nullity.”). As a necessary consequence, defendant’s motion

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<sup>1</sup> The plaintiffs in this action include Citizens for Responsibility and Ethics in Washington (“CREW”) and CREW Executive Director Melanie Sloan.

<sup>2</sup> Rule 15(a)(1) was amended in 2009 to allow a plaintiff to amend its complaint “as a matter of course” within 21 days of the service of a motion under Fed. R. Civ. P. 12(b), (e), or (f). Plaintiffs here filed their amended complaint today, October 28, well within the 21-day period for amending their complaint as a matter of course after service of defendant’s motion on October 12, 2010.

to dismiss the now superseded complaint is moot and must be denied. *See Barnes*, 2010 U.S. Dist. LEXIS 69579 at \*3 (“An amended complaint filed after a motion to dismiss has been filed renders the motion to dismiss moot.”), *citing Bancoult v. McNamara*, 214 F.R.D. 5, 13 (D.D.C. 2003).

**CONCLUSION**

For the foregoing reasons, plaintiffs respectfully request that the Court deny defendant’s motion to dismiss as moot.

Respectfully submitted,

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Dated: October 28, 2010

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**[PROPOSED] ORDER**

For the reasons set forth in the Memorandum Opinion of this date, it is hereby

**ORDERED** that the Federal Election Commission's Motion to Dismiss is **DENIED**.

Dated: \_\_\_\_\_

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ROSEMARY M. COLLYER  
United States District Judge